

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3511 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

JAGPRASAD RAMHAT DUBE

Versus

STATE OF GUJARAT

Appearance:

MR PM THAKKAR for Petitioner
SERVED for Respondents.

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 23/12/96

ORAL JUDGEMENT

Petitioner by this petition under Article 226 of the Constitution of India has prayed for direction that the action of respondent no. 1 not to promote the petitioner to the post of Police Sub-Inspector from the post of Armed Head Constable Grade - I is illegal and unconstitutional. This action of respondent no. 1 is

also challenged on the ground of breach of Article 14 of the Constitution of India in as much as the juniors to the petitioner are promoted to that post.

2. Few facts which are necessary to appreciate the case of the petitioner are as under :-

The petitioner was appointed as Armed Head Police Constable on 19-1-1948. He was promoted to the post of Head Constable Grade - II on 1-6-1967. He was not promoted to the post of Armed Head Constable Grade - I though he was eligible for the said post. He challenged the said inaction of the Government by filing Special Civil Application No. 2750 of 1981 before this Court. Said petition was finally heard and decided on 27-1-1984 and the petitioner was given effect to the promotional post from 1-2-1975. On reaching the age of superannuation the petitioner has retired on 30-6-1985 on the post of Head Constable Grade-I.

3. The petitioner by this petition has prayed for direction to give him promotion to the post of Police Sub-Inspector. According to the petitioner, his juniors are promoted vide the orders annexure 'A' and 'B' and the said act of not promoting the petitioner is in contravention of Article 14 of the Constitution of India.

4. It will be relevant to state that for being considered for the post of Police Sub-Inspector by way of promotion from Armed Head Constable Grade-I it is necessary for Armed Head Constable Grade - I to pass departmental examination. Those who have passed departmental examination for promotion to the post of Police Sub-Inspector are required to be considered for promotion to that post. It is the case of the petitioner that the petitioner was not permitted to appear in the said departmental examination and for the same the petitioner has relied on the order dated 21-3-1978 at annexure 'D'. It is true that by the said order dated 21-3-1978 the petitioner was not permitted to appear in the departmental examination held for Armed Head Constable Grade-I for considering him for promotion to the post of Police Sub-Inspector. The petitioner was Armed Head Constable on 21-3-1978 and got promotion to the post of Armed Head Constable Grade-I from Grade-II by the order dated 27-1-84 with deemed date of 1-2-75. After promotion to the post of Armed Head Constable Grade-I of the petitioner, no Armed Head Constable Grade-I is promoted to the post of Police Sub-Inspector and Armed Head Constable Grade-II also cannot be permitted to appear in the departmental examination for

promotion to the post of Police Sub-Inspector. The petitioner no doubt was deemed to be Armed Head Constable Grade-I from 1-2-1975. But he became Armed Head Constable Grade-I by the order of this court on 27-1-1984. So, on 21-3-1978 when the petitioner was not permitted to appear in the departmental examination he was not Armed Head Constable Grade-I and therefore the grievance made by the petitioner that he was not permitted to appear in the departmental examination cannot be said either improper or illegal.

5. After the judgment of this Court in Special Civil Application No. 2750 of 1981 on 27-1-1984 the petitioner is given deemed date of being promoted to the post of Armed Head Constable Grade-I of 1-2-1975. However, there is nothing on record to show that from 27-1-1984 till 3-7-85 date of filing the petition there was any attempt on the part of the petitioner to appear in the departmental examination. It is not the case of the petitioner that he wanted to appear in the departmental examination and he was not permitted to appear. It is also not his case that during this period such examination was held. In view of these facts, when the basic requirements for considering for promotion to the post of Police Sub-Inspector to pass the departmental examination was not satisfied by the petitioner, there was no question to consider him for promotion to that post.

6. This apart, those who are promoted to the post of Police Sub-Inspector they are appointed purely on temporary and ad hoc posts and they were promoted and appointed prior to the judgment of this Court. Therefore, they being Armed Head Constable Grade-I at the relevant time and at the relevant time when the petitioner was Armed Head Constable Grade - II they were admittedly senior to the petitioner and their case is not comparable with the case of the petitioner. There is nothing on record to show that any of them referred to in Annexures A and B though appointed purely on temporary and ad hoc basis were confirmed after 27-1-1984 i.e. after judgment of this court in Special Civil Application filed by the petitioner. Therefore, there is no substance in the contention raised by the learned Advocate for the petitioner that the juniors to the petitioner were promoted and there is infraction of Article 14 of the Constitution of India.

7. Thus, none of the contentions can sustain. The petition is liable to be dismissed and is dismissed. Rule is discharged. However, there shall be no order as

to costs.

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